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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/634,769	08/06/2003	Yusuke Fukuda	500.43007X00	6839
24956	7590	03/07/2006	EXAMINER	
MATTINGLY, STANGER, MALUR & BRUNDIDGE, P.C. 1800 DIAGONAL ROAD SUITE 370 ALEXANDRIA, VA 22314			ROBBINS, JANET L	
		ART UNIT	PAPER NUMBER	
			2857	

DATE MAILED: 03/07/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	Application No.	Applicant(s)
	10/634,769	FUKUDA ET AL.
	Examiner Janet Robbins	Art Unit 2857

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) Responsive to communication(s) filed on 17 February 2006.
- 2a) This action is FINAL. 2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) Claim(s) 1,2,7 and 8 is/are pending in the application.
  - 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) Claim(s) \_\_\_\_\_ is/are allowed.
- 6) Claim(s) 1,2,7 and 8 is/are rejected.
- 7) Claim(s) \_\_\_\_\_ is/are objected to.
- 8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on 06 August 2003 is/are: a) accepted or b) objected to by the Examiner.
 

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
  - a) All b) Some \* c) None of:
    1. Certified copies of the priority documents have been received.
    2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
    3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

1) <input type="checkbox"/> Notice of References Cited (PTO-892)	4) <input type="checkbox"/> Interview Summary (PTO-413) Paper No(s)/Mail Date. _____.
2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)	5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)
3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) Paper No(s)/Mail Date _____.	6) <input type="checkbox"/> Other: _____.

**DETAILED ACTION**

***Response to Amendment***

1. The action is responsive to the Amendment filed on February 17, 2006. Claims 1, 2, 7, and 8 are pending. Claims 1 and 7 have been amended. Claim 9 has been cancelled.
2. The amendments filed February 17, 2006 are sufficient to overcome the prior objections to the drawings.

***Claim Rejections - 35 USC § 102***

3. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(a) the invention was known or used by others in this country, or patented or described in a printed publication in this or a foreign country, before the invention thereof by the applicant for a patent.

4. Claims 1, 7, and 8 are rejected under 35 U.S.C. 102(a) as being anticipated by Aki et al. (US PG Pub 2002/0083169) (hereinafter “Aki”).

With respect to claim 1, Aki teaches a performance information monitoring method using computers ([0002], [0028]), wherein a first computer performs the steps of: accepting information on a group (network) relating to the first computer ([0029]); storing said accepted group information in a storage in the first computer (network monitoring system: Fig. 3: 19) ([0040], [0042]);

accepting performance information sent from a second computer (web client) ([Fig. 2: 10] ([0028], [0029], [0039], [0042]), [0093]);  
comparing performance information of the second computer previously stored in a storage with the performance information accepted from the second computer ([0094], [0095]);  
judging whether or not said second computer is included in the information of said group (if an event has occurred from the second computer) when finding a change in the performance information of the second computer based on the comparison result ([0088], [0106]); and

transmitting an instruction to the computer included in said group information to change a performance information collection interval according to said judgment result ([0030], [0031], [0042]),

wherein said performance information is monitored to detect an event of an input or output to or from a storage, and said instruction is made to shorten the performance information collection interval when a number of events of the detected input or output to or from the storage exceed a prescribed threshold value ([0030], [0052], [0054]).

With respect to claim 7, Aki teaches a performance monitoring method ([0002], [0028]) using a computer, wherein said computer detects an event of an input or output from a disk (computer hard disk) ([0093]) and transmits an instruction to change a data collection interval according to a detection result of said input or output event ([0030], [0031], [0042]), and the transmission of the instruction to change the data collection interval is made to shorten the data collection interval when a number of events of the

input or output to or from the disk exceeds a prescribed threshold value ([0030], [0052], [0054]).

With respect to claim 8, Aki teaches the method as set forth in claim 7 wherein, at the time of transmitting the instruction to change said data collection interval, said computer judges whether or not the data collection interval is in a predetermined range between upper and lower values of the data collection interval and transmits an instruction to change said data collection interval according to said judgment result (Fig. 7, 8, 10, 11, 14, 15, 16; [0049]).

### ***Claim Rejections - 35 USC § 103***

5. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

6. Claim 2 is rejected under 35 U.S.C. 103(a) as being unpatentable over Aki et al. (US PG Pub 2002/0083169) in view of Peebles et al. (US PG Pub 2003/0204789) (hereinafter “Peebles”). Aki teaches all the elements of parent claim 1 as shown above, but does not teach explicitly that said performance information includes at least one of a storage capacity, a storage used capacity, and a storage free capacity. Peebles teaches a diagnostic system which gathers performance information on storage capacity (memory utilization) (Peebles: [0015], [0046]). It would have been obvious to

one of ordinary skill in the art at the time of the invention to modify the teachings of Aki to include gathering information on storage capacity as done by Peebles because storage information will help diagnose the health of the system and therefore give a more accurate picture of the performance of a computer (Peebles: [0014]).

### ***Response to Arguments***

7. Applicant's arguments filed February 17, 2006 have been fully considered but they are not persuasive.

Applicant argues that Aki does not teach monitoring performance information to detect an event of input or output to or from a storage, and issuing an instruction to shorten the performance information collection interval when a number of events of the detected input or output to or from the storage exceeds a prescribed threshold; however, Applicant's arguments are not well taken. As shown in the previous office action, Aki teaches reducing his monitoring interval when an event of input occurs (Aki: [0034]). Aki further teaches issuing an instruction to reduce the monitoring interval (Aki: 10 minutes to 5 minutes in paragraph [0030]) when the service level has been decreased. The service level is determined by the amount of events that have been detected (the number of responses that occur within a certain time frame) (Aki: [0042], [0052], [0053]). The threshold is described by classifying the systems into service levels determined by the nominal response time limits which are exceeded (surpassed) by either going above or below the time limits (Aki: [0058]).

***Conclusion***

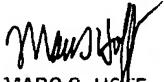
8. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Janet Robbins whose telephone number is 571-272-8584. The examiner can normally be reached on weekdays from 8:00am - 4:30pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Marc Hoff can be reached on 571-272-2216. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Janet Robbins  
March 2, 2006

  
MARC S. HOFF  
SUPERVISORY PATENT EXAMINER  
TECHNOLOGY CENTER 2830